

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RANDY E. FRANKLIN

Claimant

VS.

KOCH INDUSTRIES, INC.

Respondent

Self-Insured

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Docket No. 196,595

ORDER

Respondent and its insurance carrier appeal from a June 29, 1995 Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl.

ISSUES

On appeal, respondent contends the Administrative Law Judge exceeded her jurisdiction in awarding benefits because the evidence does not establish that claimant's shoulder injury arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the briefs of the parties, the Appeals Board finds, for preliminary hearing purposes, as follows:

The finding by the Administrative Law Judge that claimant has met his burden of proving personal injury to his left shoulder by accident arising out of and in the course of his employment should be affirmed. Respondent does not dispute that claimant sustained a work-related injury to his right elbow. Respondent contends however that claimant's shoulder complaints are the result of a subsequent, intervening accident which most likely occurred when claimant was putting up paneling at his mother-in-law's home and that such shoulder injury is not the result of the lifting incident which caused injury to claimant's right elbow, nor the result of any subsequent, work-related accident.

The evidence is contradictory concerning the date of claimant's shoulder injury, the date of the onset of his complaints, whether or not claimant reported injury to his shoulder as opposed to having only reported injury to his elbow, and when claimant first mentioned shoulder complaints to the treating physician. There is evidence to suggest both a compensable claim for shoulder injury as well as a subsequent, intervening nonwork-related injury both as to the lay witness testimony and in the medical records and reports in evidence. Thus, in this case, the issue of whether claimant suffered personal injury arising out of and in the course of his employment with respondent turns primarily on the

credibility and believability of the witnesses. The Administrative Law Judge in this case had the opportunity to observe the claimant's demeanor and judge his credibility while he was testifying at the Preliminary Hearing. She determined the testimony of claimant to be credible and believable. Where the evidentiary record is conflicting, the Appeals Board takes into consideration an Administrative Law Judge's opportunity to personally observe the witnesses and will generally give deference to the findings concerning credibility. Based upon the Appeals Board's review of the record as a whole, we find the Order granting benefits to be appropriate and supported by the evidence.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the June 29, 1995 Order of Administrative Law Judge Shannon S. Krysl should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David Jackson, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director